



Serial No. 09/864,809
60137-026

IFW AF
1723

UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bellasalma Group Art Unit: 1723
Serial No.: 09/864,809 Examiner: Sorkin, David
Filed: 24 May 2001
Title: **SURGE SUPPRESSOR FOR A MIXER HEAD ASSEMBLY**

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

Appellant wishes to thank the Examiner and the members of the Appeals conference for the allowance of claims 11, 22, 27 and 29. The Examiner's answer, however, mailed 27 May 2004 raises several new arguments. These are addressed below.

ARGUMENTS REGARDING INTERPRETATION OF "MIX HEAD"

The Examiner argues that the Examiner's interpretation of "mix head" is not overly broad and that Appellant does not offer an alternative manner in which the term "mix head" should be construed.

Answer

As stated in Appellant's brief, the ordinary meaning of the term "mix head" and "mixer section" as it would be interpreted by one of ordinary skill in the molding art provides a definite recitation of the claimed structure. Even in the preamble of claim 1, Appellant recites: "A valve assembly *for a mix head assembly of a molding system* comprising:" and in the preamble of claim 17 Appellant recites "A *molding system* comprising:" Although typically not constituting a limitation, "If the claim preamble, when read in the context of the entire claim, recites limitations of

the claim, or, if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999).

Here, Appellant's usage of *for a mix head assembly of a molding system* gives life to the terminology of "mix head" which otherwise the Examiner is treating as if in a vacuum. That is, the understanding of "mix head" when utilized consistent with the specification, and with the claim language being read in light of the specification does address the manner in which the term "mix head" should be construed.

Furthermore, the rejections over *Paulson* in which the bell pipe of a musical instrument - is attempted to be construed as a mix head when "mix head" is read in light of the specification of the present application illustrates the Examiner's overly broad interpretation to the point of utilizing non-analogous art. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it logically would have commended itself to an inventor's attention in considering his problem because of the matter with which it deals. *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992). A musical instrument is wholly unrelated to the present invention and suggests that it is non-analogous.

Paulson is not in Applicant's field of endeavor and is not reasonably pertinent to the particular problem that the applicant has solved. One would *never* look to the field of musical instruments to provide a mix head for a molding system. The simple manual operation of a musical instrument would not be of any concern to the high pressure fluid dynamics of a mix head assembly of a molding system. *Paulson* -- being a musical instrument -- would not logically have commended itself to an inventor's attention in considering his problem because of the matter with which it deals. *Paulson* is not analogous art and the rejections based thereon should be overturned.

CLOSING

For the reasons set forth above, the rejection of all claims is improper and should be reversed.
Appellant earnestly requests such an action.

Respectfully submitted,

CARLSON, GASKEY & OLDS, P.C.

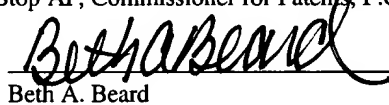


DAVID L. WISZ
Registration No. 46,350
Attorneys for Appellant
400 West Maple, Suite 350
Birmingham, Michigan 48009
(248) 988-8360

Dated: July 27, 2004

CERTIFICATE OF MAIL

I hereby certify that the enclosed Reply is being deposited with the United States Postal Service in triplicate as First Class Mail, postage prepaid, in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 27, 2004.


Beth A. Beard

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